



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

October 3, 2017

Clerk, United States Court of
Appeals for the Sixth Circuit
532 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202-3988

Re: *NLRB v. Inverted Healthcare Staffing,
LLC d/b/a United MedSource*, Board Case
No. 08-CA-174289

Dear Ms. Hunt:

I am enclosing an application for summary entry of a judgment enforcing the Board's order in this case, and copies of a proposed judgment.

Please serve a copy of the application on Respondent, whose address appears on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Eric LaGroux
Inverted Healthcare Staffing, LLC
d/b/a UnitedMedSource
6414 Market St.
Youngstown, OH 44512-3434

The Board is not aware
of a current counsel
for Respondent

Tel: (330) 212-5521

Eric LaGroux
470 Old Country Lane
North Lima, Ohio 44452

Eric LaGroux
8392 Tod Avenue
Boardman, Ohio 44512

CHARGING PARTY:

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Chesterland, OH 44026-2651

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CHARGING PARTY COUNSEL:

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REGIONAL DIRECTOR:

Allen Binstock , Regional Dir.
National Labor Relations Board
1240 East 9th Street – Room 1695
Cleveland, OH 44199-2086

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	: No.
v.	:
	: Board Case No.:
INVERTED HEALTHCARE STAFFING, LLC	: 08-CA-174289
D/B/A UNITED MEDSOURCE	:
	:
Respondent	:

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its order against Inverted Healthcare Staffing, LLC d/b/a United MedSource (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent did not contest that it had defaulted on its settlement agreement and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor

practices occurred in Ohio. The Board's final order issued on June 29, 2017, and is reported at 365 NLRB No. 103.

B. Proceedings Before the Board

1. Upon a charge, a first amended charge and a second amended charge filed on April 18, July 26, and July 29, 2016, respectively, the Regional Director for Region 8 issued a complaint on August 30, 2016, against the Respondent, alleging that it violated certain provision of the National Labor Relations Act.

2. Subsequently the parties entered into a informal settlement agreement, which was approved by the Director for Region 8 on October 28, 2016. The settlement agreement required the Respondent to take certain actions and, among other things, contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on August 30, 2016 in the instant case. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and its Answer to such Complaint will be considered withdrawn. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the

pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

3. By letter dated December 13, 2016, the Region 8 Compliance Officer reminded the Respondent of the steps necessary to ensure compliance with its obligations under the settlement agreement and notified the Respondent that, to date, it had failed to comply with the terms of the settlement agreement.

4. On January 19, 2017, the Acting Regional Director sent a letter to the Respondent and its counsel notifying them that it had not complied with the settlement agreement obligations and stating that Respondent had 14 days to provide evidence of compliance or intent to comply. The letter stated that failure to provide evidence of intent to comply would result in the complaint being reissued and a motion for default judgment being filed with the Board.

5. The Respondent did not respond to the letter nor did it comply with the terms of the agreement.

6. On April 21, 2017, the Regional Director issued a complaint based on the settlement breach. On April 24, 2017, the General Counsel filed a Motion for Default Judgment with the Board. On April 26, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause giving Respondent until May 10, 2017, to respond as to why the motion should not be

granted.

7. The Respondent did not respond. The allegations in the motion for default judgment were undisputed.

8. In light of the uncontroverted allegations in the motion for default judgment that the Respondent failed to comply with the terms of the settlement agreement, and pursuant to the noncompliance provisions thereof, on June 29, 2017, the Board issued its Decision and Order granting the Motion for Default Judgment and entered an appropriate order against Respondent.

C. The Board Is Entitled to Summary Enforcement of Its Order

On these facts, the Board is entitled to summary enforcement of its order against Respondent. The settlement agreement provided that in case of noncompliance the allegations would be deemed admitted and the only issue that could be raised before the Board is whether the Respondent had defaulted on the terms of the settlement agreement. The Respondent did not raise any issues before the Board and did not contest that it had defaulted on the terms of the settlement agreement.

Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals “unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” This limitation is jurisdictional and its application is

mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982).

Interpreting that requirement, courts have consistently held that a respondent's failure to assert a defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Innkeepers of Ohio, Inc.*, 596 F.2d 177 (6th Cir. 1979); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973); *NLRB v. Globe-Wernicke Systems*, 336 F.2d 589, 589 (6th Cir. 1964). *See also Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 3rd day of October, 2017

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	: No.
v.	:
	: Board Case No.:
INVERTED HEALTHCARE STAFFING, LLC	: 08-CA-174289
D/B/A UNITED MEDSOURCE	:
	:
Respondent	:

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Inverted Healthcare Staffing, LLC d/b/a United MedSource, its officers, agents, successors, and assigns, enforcing its order dated June 29, 2017, in Case No. 08-CA-174289, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Inverted Healthcare Staffing, LLC d/b/a United MedSource, its officers, agents, successors, and assigns, shall abide by said order (see attached order and appendix).

ENTERED BY ORDER OF THE COURT

Clerk

NATIONAL LABOR RELATIONS BOARD

v.

INVERTED HEALTHCARE STAFFING, LLC D/B/A UNITED MEDSOURCE

ORDER

Inverted Healthcare Staffing, LLC d/b/a United MedSource, Youngstown, Ohio, its officers, agents, successors, and assigns shall

1. Cease and desist from
 - (a) Maintaining unlawful personal conduct, attention to duty, and confidentiality rules in its employee handbook.
 - (b) Terminating the employment of employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.
 - (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) To the extent it has not already done so, rescind the following unlawful handbook rules:
 - (A) Personal Conduct
 - You may not exhibit inappropriate or unacceptable conduct
 - You may not engage in fights, horseplay, or any form of boisterous or disorderly conduct while on assignment
 - (B) Attention to Duty
 - You may not loiter or attend to personal business while on assignment
 - (C) Honestly (sic) and Confidentiality
 - You must at all times maintain confidentiality of Company business records, operations, methods of doing business, client lists, employee lists, etc.

- (b) Revise the employee handbook to delete the above unlawful rules and advise employees in writing that it has done so and that the unlawful rules will no longer be enforced.
- (c) Furnish all current employees with inserts for the employee handbook that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful policies; or publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rules, or (2) provides the language of lawful policies.
- (d) Within 14 days from the date of this Order, offer Tamara Szabo-Schmid full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
- (e) Make Szabo-Schmid whole for any loss of earnings and other benefits she may have suffered as a result of the unlawful termination of her employment, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
- (f) Compensate Szabo-Schmid for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
- (g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful termination of Szabo-Schmid, and within 3 days thereafter, notify her in writing that this has been done and that the termination will not be used against her in any way.
- (h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (i) Within 14 days after service by the Region, post at its facility in Youngstown, Ohio, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for

Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2, 2015.

- (j) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain unlawful personal conduct, attention to duty, and confidentiality rules in our employee handbook.

WE WILL NOT terminate your employment because you engage in protected concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, to the extent we have not already done so, rescind the following unlawful handbook rules:

(A) Personal Conduct

- You may not exhibit inappropriate or unacceptable conduct
- You may not engage in fights, horseplay, or any form of boisterous or disorderly conduct while on assignment

(B) Attention to Duty

- You may not loiter or attend to personal business while on assignment

(C) Honestly (sic) and Confidentiality

- You must at all times maintain confidentiality of Company business records, operations, methods of doing business, client lists, employee lists, etc.

WE WILL revise the employee handbook to delete the above unlawful rules and WE WILL advise employees in writing that we have done so and that the unlawful rules will no longer be enforced.

WE WILL furnish all current employees with inserts for the employee handbook that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful policies; or publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rules, or (2) provides the language of lawful policies.

WE WILL, within 14 days from the date of the Board's Order, offer Tamara Szabo-Schmid full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Tamara Szabo-Schmid whole for any loss of earnings and other benefits suffered as a result of her unlawful termination, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Tamara Szabo-Schmid for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful termination of Tamara Szabo-Schmid, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful termination will not be used against her in any way.

INVERTED HEALTHCARE STAFFING, LLC D/B/A UNITED MEDSOURCE

The Board's decision can be found at www.nlr.gov/case/08-CA-174289 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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D/B/A UNITED MEDSOURCE	:
	:
Respondent	:

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, appearance of counsel form and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following party at the addresses listed below:

Eric LaGroux
470 Old Country Lane
North Lima, Ohio 44452

Eric LaGroux
8392 Tod Avenue
Boardman, Ohio 44512

Eric LaGroux
Inverted Healthcare Staffing, LLC
d/b/a UnitedMedSource
6414 Market St.
Youngstown, OH 44512-3434

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 3rd day of October, 2017